

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 774

[Docket No. 080724907-91435-01]

RIN: 0694-AE44

Addition of New Export Control Classification Number 6A981 Passive Infrasonic Sensors to the Commerce Control List of the Export Administration Regulations, and Related Amendments.

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed Rule, request for comments.

SUMMARY: The Bureau of Industry and Security proposes to amend the Export Administration Regulations (EAR) by adding Export Control Classification Number (ECCN) 6A981 to the Commerce Control List (CCL) to control passive infrasonic sensors because of their military and commercial utility. Items under this new ECCN

will be controlled for Regional Stability (RS) and Anti-Terrorism (AT) reasons. In addition, BIS proposes to control technology and software for the development, production, or use of these items for RS and AT reasons under revised ECCNs 6D991 and 6E991, respectively.

DATES: Comments must be received by [INSERT 60 DAYS AFTER DATE OF PUBLICATION].

ADDRESSES: You may submit comments, identified by RIN- AE44 by any of the following methods:

E-mail: publiccomments@bis.doc.gov or via www.regulations.gov. Include “RIN- AE44” in the subject line of the message.

Fax: (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

Mail or Hand Deliver/Courier: Sharron Cook, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Ave, NW, Room 2705, Washington, DC 20230, Attn: RIN- AE44.

Send comments regarding the collection of information associated with the rule, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K._Seehra@omb.eop.gov, or by fax to (202) 395-7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Ave, NW, Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James Thompson, Sensors and Aviation Division, Bureau of Industry and Security, Telephone: (202) 482-4252.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security proposes to amend the Export Administration Regulations (EAR) by imposing new foreign policy export and reexport controls on certain infrasound sensors (i.e., sensors capable of detecting sound from 0.01 to 16 Hertz).

Infrasound sensors are used by the oil exploration industry, meteorologists, seismologists, and the military to detect natural or man-made infrasound sources including earthquakes, volcanic eruptions, rocket launch, and/or nuclear explosions.

Passive infrasound sensors, which possess civil and military utility, are not currently specified in the CCL, but similar sensors are subject to the EAR. Today's passive infrasound sensors have updated electronics, which increase their sensitivity and allow the detection of additional infrasound sources. Because of the enhanced capabilities of current sensors, these passive infrasound sensors have military and commercial applications, and therefore should be controlled under the EAR for regional stability (RS) and antiterrorism (AT) reasons.

BIS proposes to amend the EAR, Supplement No. 1 to Part 774 (Commerce Control List), Category 6 (Sensors and Lasers) by adding Export Control Classification Number (ECCN) 6A981. This new ECCN 6A981 would be controlled for RS and AT reasons and would have the following control parameters; “Sensors designed to measure pressure whose 3 dB bandwidth intersects any part of the infrasound band of 0.01-16 Hz and have a sensor band-limited root mean squared (RMS) self-noise from 0.5-2Hz less than 0.15 milliPascals, which is equivalent to an average of -77 dB (relative to 1 Pa²/Hz) across the 0.5-2Hz band.”

BIS proposes to require a license for the export and reexport of these sensors to countries with an X in the box under RS Column 2 and AT Column 1 on the Commerce Country Chart (See Supplement No. 1 to Part 738 of the EAR.) There may be license exceptions available for export of these items under certain circumstances (License Exceptions GOV, TMP, RPL, TSU, BAG, and APR).

This rule also proposes to revise the headings of ECCNs 6E001 and 6E002 to make clear that ECCN 6A981 is excluded from the scope of these entries. In addition, this rule proposes to revise the headings and license requirements sections of ECCNs 6D991 and 6E991 in order to add RS and AT controls for development, production or use technology and software for equipment under ECCN 6A981.

All other license requirements of the EAR that are applicable to a transaction involving these sensors would also apply to items controlled by new ECCN 6A981 (e.g., end-user and end-use based license requirements set forth in Part 744 of the EAR).

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 Fed. Reg. 41325 (August 14, 2009)), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707).

Request for Public Comments

BIS is requesting public comment on the possible impact of this proposed rule. As these sensors are not currently described on the Commerce Control List (CCL), it is difficult for BIS to determine how many U.S. companies manufacture these sensors and would be impacted by this new control. Therefore BIS is seeking specific information about the impact of this proposed rule, as follows:

1. Whether your company manufactures parts, software, or technology that would be controlled if this rule was to be promulgated.
2. What the end-use is for the sensors your company manufactures.
3. What the typical end-uses are for these sensors, other than those end-uses described in this proposed rule.

4. Whether the parameters set forth in this rule are appropriate to control sensors that could be used to detect rocket launch and/or nuclear explosions, or whether the parameters are overly broad. If the controls are overly broad, could the parameters be narrowed to capture sensors that BIS is interested in controlling.
5. Whether there is foreign availability for these sensors. If foreign availability does exist, it would be helpful if your company could provide BIS with the URLs referencing these sensors on foreign websites or other foreign marketing material.

Rulemaking Requirements

1. This proposed rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has previously been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. This rule is not expected to result in any change for collection purposes.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the "ADDRESSES" section of this rule.

3. This rule does not contain policies with Federalism implications as this term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this proposed rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 742 and 774 of the Export Administration Regulations (15 CFR Parts 730-774) are proposed to be amended as follows:

PART 742 – [AMENDED]

1. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; Sec 1503, Pub. L. 108-11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

Section 742.6 – [Amended]

2. Section 742.6 is amended by revising paragraph (a) (4) (i) to read as follows:

§ 742.6 Regional Stability.

(a) * * *

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(4) RS Column 2 license requirements.

(i) License Requirements Applicable to Most RS Column 2 Items. As indicated in the CCL and in RS Column 2 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except Australia, Japan, New Zealand, and countries in the North Atlantic Treaty Organization (NATO) for items described on the CCL under ECCNs 0A918, 0E918, 1A004.d, 1D003 (software to enable equipment to perform the functions of equipment controlled by 1A004.d), 1E001 (technology for the development, production, or use of 1A004.d), 2A983, 2A984, 2D983, 2D984, 2E983, 2E984, 6A981, 6D991 (only “software” for the “production”, “development”, or “use” of commodities in ECCN 6A981), 6E991 (only for “technology” for the “production, “development”, or “use” of commodities in ECCN 6A981), 8A918, and for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, 2B018, 9A018.a and .b, 9D018 (only software for the “use” of commodities in ECCN 9A018.a and .b), and 9E018 (only technology for the “development”, “production”, or “use” of commodities in 9A018.a and .b).

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PART 774 – [AMENDED]

3. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 et seq., 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

Supplement No. 1 to Part 774 – [Amended]

4. In Supplement No. 1 to Part 774 (the Commerce Control List) Category 6 is amended by adding Export Control Classification Number (ECCN) 6A981 after ECCN 6A226 to read as follows:

Supplement No. 1 to Part 774 – The Commerce Control List

* * * * *

6A981 Passive infrasound sensors, as follows (see List of Items Controlled).

License Requirements

Reason for Control: RS, AT

Control

Country Chart

RS applies to entire entry RS Column 2

AT applies to entire entry AT Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: Number

Related Controls: N/A

Related Definitions: N/A

Items:

- a. Sensors designed to measure pressure whose 3 dB bandwidth intersects any part of the infrasound band of 0.01-16 Hz and have a sensor band-limited root mean squared (RMS) self-noise from 0.5-2Hz less than 0.15 milliPascals, which is equivalent to an average of -77 dB (relative to $1 \text{ Pa}^2/\text{Hz}$) across the 0.5-2Hz band.
- b. [RESERVED]

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5. In Supplement No. 1 to Part 774 (the Commerce Control List) Category 6 is amended by revising the Heading and the License Requirements section of ECCN 6D991 to read as follows:

6D991 “Software” specially designed for the “development”, “production”, or “use” of equipment controlled by 6A002.e, 6A981, 6A991, 6A996, 6A997, or 6A998.

License Requirements

Reason for Control: RS, AT

Control(s)

Country Chart

RS applies to “software” for
equipment controlled by
6A002.e or 6A998.b

RS Column 1

RS applies to “software” for
equipment controlled by 6A981.

RS Column 2

AT applies to entire entry,

AT Column 1

except “software” for
equipment controlled by
6A991

AT applies to “software” for AT Column 2
equipment controlled by
6A991

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6. In Supplement No. 1 to Part 774 (the Commerce Control List) Category 6 is amended
by revising the Heading of ECCN 6E001 to read as follows:

**6E001 “Technology” according to the General Technology Note for the
“development” of equipment, materials or “software” controlled by 6A (except
6A981, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995),
6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).**

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7. In Supplement No. 1 to Part 774 (the Commerce Control List) Category 6 is amended
by revising the Heading of ECCN 6E002 to read as follows:

6E002 “Technology” according to the General Technology Note for the “production” of equipment or materials controlled by 6A (except 6A981, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (except 6B995) or 6C (except 6C992 or 6C994).

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8. In Supplement No. 1 to Part 774 (the Commerce Control List) Category 6 is amended by revising the Heading and the License Requirements section of ECCN 6E991 to read as follows:

6E991 “Technology” for the “development”, “production” or “use” of equipment controlled by 6A981, 6A991, 6A996, 6A997, or 6A998.

License Requirements

Reason for Control: RS, AT

Control(s)

Country Chart

RS applies to “technology”
for equipment controlled by
6A998.b.

RS Column 1

RS applies to “technology” for
equipment controlled by 6A981. RS Column 2

AT applies to entire entry
except “technology” for
equipment controlled by 6A991 AT Column 1

AT applies to “technology”
for equipment controlled
by 6A991 AT Column 2

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Dated:

Kevin J. Wolf
Assistant Secretary
for Export Administration